

**REMARKS**

Amendments to claims 1, 2, 15, 21, 23, 30, 31, 56, 66, 67, and 81 are for the purpose of clarifying what Applicant regards as the claimed invention. Amendment to claim 55 is to bring the claim into conformity with the language of its base claim. No new matter has been added.

II. Claim Rejections under 35 U.S.C. § 102

Claims 1-32, 53-56, 66-67, 75, and 80-91 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over US 5997883 (Epstein) in view of US 6198959 (Wang).

Claims 1, 15, and 23

Claim 1 has been amended to recite acquiring image data of at least a part of the object over a time interval *using radiation* (Emphasis Added). Claims 15 and 23 have been amended to recite similar limitations. Both Epstein and Wang do not disclose or suggest the above limitations. Rather, both Epstein and Wang disclose using magnetic resonance to obtain an image, which does not involve any use of radiation. Since both Epstein and Wang do not disclose or suggest the above limitations, any purported combination of these references cannot result in the subject matter of claims 1, 15, and 23.

In addition, Applicant respectfully notes that Wang specifically *teaches away* from using radiation for imaging. This is because Wang teaches using magnetic resonance, and criticizes the use of radiation for imaging (see column 1, lines 24-30 and 33-40). Since a *prima facie* case of a § 103 rejection cannot be sustained if a reference teaches away from a claimed feature, Applicant respectfully requests that the § 103 rejections be withdrawn.

For at least the foregoing reasons, claims 1, 15, and 23, and their respective dependent claims, are believed allowable over Epstein, Wang, and their combination.

Claim 30

Claim 30 has been amended to recite determining whether the first phase value is within a prescribed phase range, and constructing an image by a processor using the image data if the first phase value is within the prescribed phase range. Epstein and Wang do not disclose or suggest such limitations. In particular, there is nothing in Epstein and Wang that discloses or suggests determining whether a phase value associated with image data is within a prescribed phase range. Also, there is nothing in these cited references that discloses or suggests that a construction of an image is conditioned upon a phase value (associated with image data) being within a prescribed phase range. For at least the foregoing reasons, claim 30 and its dependent claims, are believed allowable over Epstein.

Claim 56

Claim 56 has been amended to recite calculating an image phase value, and assigning the image phase value for the image data to thereby bin the image data. Epstein and Wang do not disclose or suggest such limitations. In particular, there is nothing in these references that discloses or suggests calculating an image phase value, and then assigning the calculated image phase value for image data in order to bin the image data. Since both Epstein and Wang do not disclose or suggest the above limitations, any purported combination of these references cannot result in the subject matter of claim 56. For at least the foregoing reasons, claim 56 and its dependent claims are believed allowable over Epstein, Wang, and their combination.

Claim 75

Claim 75 recites the act of *sorting image data* using a processor based on a portion of a cycle of a breathing motion of the object at which the image data are acquired. Epstein and

Wang do not disclose or suggest such limitations. In particular, there is nothing in Epstein and Wang that discloses or suggests *the act of sorting image data*, nor is there anything in Epstein and Wang that discloses or suggests sorting image data in the manner described in the claim – i.e., based on a portion of a cycle of a breathing motion at which the image data are acquired. In addition, Applicant submits that Epstein and Wang do not describe any need to sort image data. Since both Epstein and Wang do not disclose or suggest the above limitations, any purported combination of these references cannot result in the subject matter of claim 75. For at least the foregoing reasons, claim 75 and its dependent claims are believed allowable over Epstein, Wang, and their combination.

**CONCLUSION**

If the Examiner has any questions or comments, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**.

Respectfully submitted,

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